



STATE OF ARIZONA  
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY  
GOVERNOR

EXECUTIVE OFFICE

August 1, 2016

Meredith Miller  
U.S. Department of Education  
400 Maryland Avenue SW, Room 3C106  
Washington, DC 2020-2800

Dear Ms. Miller,

As Governor of the State of Arizona, I would like to thank the Secretary of Education and the U.S. Department of Education (USDOE) for the opportunity to provide comment for proposed rulemaking implementing Title I accountability and state plans under the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act (ESSA). I do so in partnership with a comprehensive group of education, business and philanthropic organizations with whom I convened to solicit feedback and comment.

I applaud USDOE's strong focus on stakeholder and community engagement. I look forward to continued partnership and collaboration with the Arizona Department of Education (ADE) and the numerous education agencies and stakeholders, including teachers and parents, in the development of our state ESSA plan. In addition to the ADE stakeholder engagement process, I have also independently gathered a group of education, business and philanthropic leaders to assist in informing my feedback to the USDOE on the ESSA regulatory process to ensure that the comments reflected in this letter reflect the needs of the field.

While Arizona education reform efforts in the area of long-term goal setting, school assessments and accountability are already in progress, we look forward to integrating the ESSA as part of our state-level activities. We appreciate the expeditious speed in which the USDOE has started the work with states to implement ESSA. I am very optimistic that if ESSA is implemented in the character and vision with which it was designed, states and all of the schools, and the students who comprise each state's public education system will be allowed to teach and learn with flexibility and ingenuity. Arizona looks forward to creating a plan that focuses on academic excellence and meeting the high expectations in the 21<sup>st</sup> century required of our world-class education system.

Unlike previous federal education law, the ESSA's most significant strength is its ability to recognize the establishment of long-term and interim goal setting, and the creation and implementation of school accountability as a state-centric exercise, and as such, provides in the spirit of the law, a clear expectation that states must have the utmost flexibility to define their state goals, measures of progress, and ultimately how they intend to determine and implement the indicators that will govern their accountability systems. It is extremely important that the parameters of ESSA are strong, yet flexible, so that we are able to begin the challenging work of creating a strong state plan. Additionally, the ESSA ensures that states can easily amend their plans if and when new strategies are needed.

Additionally, the ESSA acknowledges the role of Governor as an essential part of the development and approval of the state plan and the ongoing administration of the state's public education system.

#### General Concerns

- While we understand that ESSA regulations are intended to provide consistency of application of the law, they are not intended to replace or eliminate the flexibility of range afforded states in the ESSA. In many instances in this proposed rulemaking, education stakeholders identified very specific, prescriptive policies that narrowed the intent of the ESSA as it relates to state's flexibility to establish their own systems. USDOE must be extremely mindful to establish rules within the letter, spirit and intent of the ESSA. We believe that overly prescriptive regulations will only hinder the innovation and creativity of state and local education agencies as they develop new learning environments and teaching approaches. **We recommend additional flexibility in all areas of proposed regulations to allow Arizona's state plan to be developed and evaluated for alignment within the original intent of ESSA.**
- An area of common concern for education and business stakeholders is the ability of ESSA regulations to stand the test of time. Any USDOE rulemaking must allow local education agencies to take advantage of effective innovations that arise every day, rather than be trapped with the strategies that were deemed effective during rulemaking. In Arizona, we strive to encourage collaboration across all of our schools to share best practices to improve their individual system which means that our schools are constantly adapting to new methods. **We recommend the USDOE consider the rulemaking process as providing states "technical assistance" and not as a further policy or a compliance document.**

#### Areas of Concern

- **Accountability Systems**

The proposed rules require that states include a single, summative rating for an individual school accountability indicator. While Arizona appreciates the desire for a simple and transparent rating, a single gauge of accountability was not prescribed in the ESSA and does not comprehend the unique character and focus of each school community. Arizona is currently in the process of a redesign of our "A-F" rating system and has already decided to use multiple academic measures within our accountability system. This process was outlined in SB1430, a broadly supported, piece of legislation passed this year, which I signed enthusiastically. **We recommend that the proposed rules be amended to remove this prescriptive requirement and allow states to determine their own school rating format and how those ratings will be used to identify schools needing assistance.**

In Arizona, over 200 "alternative schools" provide exemplary programs to students who have not thrived in a traditional education environment. Alternative education engages these youth and helps them achieve a high school diploma, workforce training, continued education or the necessary skills to enter the military. Arizona's current accountability system realizes the unique characteristics of alternative schools and their students – and does not attempt to hold them accountable in the same way as traditional schools and allows differentiated academic targets, such as graduation rates. **We recommend that ESSA regulations be broadened to allow school**

**rating systems by school type and to allow states to establish their own reasonable goals to measure educational outcomes in their alternative schools.**

- **Assessments**

The proposed regulations do not have a clear and refined description on the use of both end-of-course and summative examinations for the purposes of high school assessment and accountability. Last year, Arizona policymakers passed HB2544 that allows local education agencies the choice to use either the state adopted assessment or select from a menu of approved assessments – in order to more efficiently measure their students for both mastery of subject matter and for college and career predictive purposes – within the parameters of a valid and high quality tool aligned to state standards. This allows our schools to implement rigorous assessments that utilize innovative and customized local curriculum and reduces the time spent on standardized testing without compromising accountability and comparability. **We recommend that USDOE provide clarity on the inclusiveness of both end-of-course and summative assessments for state accountability purposes.**

While the proposed rules do allow for a menu of assessments to be used for high school accountability, the rules do not consider the same flexibility for grades 3-8. The language is unclear on how a single assessment is defined. We agree that any assessment used to measure proficiency and growth, similar to high school assessment(s), should align to rigorous state academic standards and local curricula in a fashion that ensures validity and comparability – and allows freedom in pedagogy. **We recommend that states be allowed to implement a grade 3-8 assessment system approved by the state that is not restricted to one assessment, but allows local education agencies, and teachers and parents, to choose assessments that provide comparable, high quality, valid and reliable data on what Arizona would like students to achieve – and to adapt those assessments as needed.**

Proposed rules require that all schools within a local education agency utilize the same assessment. HB2544 already accomplishes the objective of comparability by requiring that providers of locally procured achievement assessments demonstrate that the scores can be equated for state accountability programs, including establishing comparable student assessment scores and performance levels. **We recommend that regulations allow schools within a local education agency to offer different assessments as long as the assessment scores can be equated for the purposes of ensuring meaningful within district comparisons of student achievement.**

- **School Improvement**

Proposed rules require states to identify any high school with less than 67% graduation rate (based on 4 year cohort) for targeted support and improvement. This regulation is not consistent with ESSA, which allows states to use rates that are consistent with their long-term goals, measures of progress and annual indicators. As mentioned above, Arizona has a robust school choice model, including alternative schools, which would be seriously impacted by the setting of a specific graduation target within a specific four-year rate. Arizona alternative schools educate immigrants, children in foster care, adjudicated youth, re-enrolled dropouts and/or students at-risk of dropping out. Many of these students do not have the commensurate “credits” for their grade designation and require additional time to graduate. **We recommend that the proposed rules be modified to grant states the flexibility to use a four-year rate or an extended year-rate,**

**whichever is consistent with the programs that serve large populations of students who face these circumstances.**

The proposed regulations require states to allocate a set amount of funding for each targeted school for comprehensive improvement, without regard to for the size, type or needs of the school. In Arizona, we have a significant amount of small, rural and remote schools. This policy would cause our state to overfund our smaller schools and deplete resources to larger schools. **We recommend that the regulations be modified to allow the state to determine the allocation of school improvement dollars based on the individual needs of the school.**

- **Subgroups**

In the course of providing states the maximum flexibility, ESSA provides the ability for states to identify “consistently underperforming” subgroups. Unfortunately, the proposed regulations go one significant step beyond ESSA and require identification of these subgroups using no more than two years of data and to assign targeted support schools to improvement status if low-performing students do not improve within three years. These maximum timelines are an example of the proposed regulations becoming policy, rather than providing the technical assistance needed by states to determine their own implementation strategies as envisioned by ESSA. Unintended consequences of these timelines are over-identifications of schools and straining the availability of school improvement funds to assist those students most in need. **We recommend that the maximum timeline regulations be removed and the identification process be delegated to states.**

The proposed regulations provide prescriptive timelines for English Language Learners (ELL) to achieve language proficiency. States must be afforded the flexibility to determine timelines for ELL achievement/proficiency. Arizona has a large number of ELL students at all grade levels, with a specific state-mandated program of study. This policy could disproportionately affect Arizona high schools with newly identified ELL students, as students identified in elementary grades are more likely to reclassify than an older student. **We recommend that the regulatory timeline for proficiency reclassification of English Language Learners be made through state-level decision and not a one size fits all approach.**

ESSA requires each state to determine a minimum number of students that the State will use for accountability and reporting purposes. However, the proposed regulations go beyond ESSA’s intent for state determination and prescribe a minimum n-size of 30 without substantive justification. **We recommend that regulations return to what ESSA intended – a state-developed minimum, which best captures the maximum participation of students in all of Arizona’s schools while ensuring their privacy.**

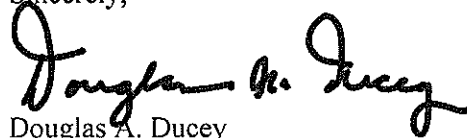
Proposed regulations requires the transportation for children in foster care to and from their schools of origin, consistent with the procedures developed by the local education agencies in collaboration with the State or local child welfare agency, even if the local education agency and local child welfare agency do not agree on which agency or agencies will pay any additional costs incurred to provide such transportation. In Arizona’s experience, lack of transportation is a common barrier to stability and we strongly support the ESSA for recognizing the importance of transportation. **We recommend language that would clarify the joint obligation of both the local education agency and the child welfare agency.**

- **Flexibility in the Use of Federal Funds**

The proposed rules continue to require a rigid format for the expenditure and reporting of Title funds. Again, the ESSA's intent was to focus on the unique needs of each state and each local education agency – allowing them to retain more ownership and control over their budgets to target needs that are exclusive to their schools. The strict designation of dollars is also inconsistent with Arizona's school funding practice – all accounts are in essence, fungible and the focus are outcomes, not expenditure categories. The intention of “supplement vs. supplant” is to ensure targeted investment – but in the proposed rules, accounting practices stifle each school's highest and best use. **We recommend that the proposed rules be amended to allow local education agencies more flexibility to smoothly reallocate dollars to priority and effective programs and to eliminate costly and bureaucratic reporting requirements.**

Thank you again for the opportunity to provide meaningful and state-relevant feedback.

Sincerely,

A handwritten signature in black ink that reads "Douglas A. Ducey". The signature is written in a cursive style with a large, prominent initial 'D'.

Douglas A. Ducey  
Governor  
State of Arizona